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Joseph vs the District Disaster Management Authority

Joseph vs the District Disaster Management Authority

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Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : WP(C)/5380/2024

Appellant : Joseph

Respondent : The District Disaster Management Authority

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 WP(C) NO. 5380 OF 2024 PETITIONER: 1 JOSEPH AGED 76 YEARS SON OF THOMAS, PANTHALANIKKAL, KUNDUKADU P.O., MADAKKATHARA VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680028 BY ADVS. P.M.ZIRAJ IRFAN ZIRAJ RESPONDENTS:

1 THE DISTRICT DISASTER MANAGEMENT AUTHORITY THRISSUR DISTRICT, COLLECTORATE, THRISSUR DISTRICT, REPRESENTED BY ITS CHAIRMAN, DISTRICT COLLECTOR, THRISSUR., PIN - 680003 2 THE DISTRICT COLLECTOR COLLECTORATE, THRISSUR

DISTRICT, PIN - 680003 3 THE DISTRICT GEOLOGIST DEPARTMENT OF MINING AND GEOLOGY, THRISSUR DISTRICT, PIN - 680020 4 MADAKKATHARA GRAMA PANCHAYATH MADAKKATHARA, THRISSUR DISTRICT,PIN - 680651 REPRESENTED BY ITS SECRETARY 5 THE SECRETARY MADAKKATHARA GRAMA PANCHAYATH, MADAKKATHARA, THRISSUR DISTRICT, PIN - 680651 6 ASSISTANT ENGINEER (LSGD), MADAKKATHARA GRAMA PANCHAYATH, MADAKKATHARA, THRISSUR DISTRICT, PIN - 680651 7 DISTRICT SOIL CONSERVATION OFFICER THRISSUR, THRISSUR DISTRICT, PIN - 680020

BY ADVS. SRI.AJITH VISWANTHAN, GP SRI.RAJIT, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

---------- ---------- Dated this the 31st day of May, 2024

JUDGMENT

The petitioner is in need of issuance of permit and transit passes to transport ordinary earth, which happened to be accumulated in his property pursuant to a land slide. Ext.P1 order enabling removal of ordinary earth was issued by the Divisional Forest Officer, based upon which Ext.P2 report was preferred by the Tahasildar recommending grant of necessary permit. The 3 rd respondent, after site inspection, issued Ext.P4 communication to the 2nd respondent/District Collector informing that it is impossible to use the land without removing the earth. On the premise that the subject property is adjacent to forest land, necessary enabling orders were issued by the Divisional Forest Officer, as also, the Deputy Range Forest Officer vide Exts.P5 and P6. On the strength of the above referred orders, Ext.P7 permit and transit passes were issued by the 3 rd

respondent/Geologist to transport 350 M3 of ordinary earth from the petitioners property. The petitioner was subsequently issued with Ext.P8 patta by the Special Tahasildar, Land Assignment, Thrissur, based upon which he paid land tax as evident from Ext.P9. Since a substantial portion of the earth is still remaining in the petitioners property, the petitioner again applied for permit and transit license, expressing his willingness to pay royalty. After various proceedings, the 7 th respondent/District Soil Conservation Officer preferred Ext.P16 report, which recommended removal of ordinary earth to an extent 307.41 M3. The 6th respondent/Assistant Engineer (LSGD) also conducted an inspection and submitted a report recommending removal of earth to the extent of 94.6 M3. The report preferred by the 6th respondent is illegal and without authority. The petitioner seeks issuance of a writ of mandamus directing the 3rd respondent/Geologist to issue permit and sufficient transit passes to transport the remaining earth.

2. Heard the learned counsel for the petitioner,

learned Government Pleader appearing for respondents 1 to 3 and 7 and the learned counsel appearing for the 4th respondent/Panchayat, 5th respondent/Secretary and the 6th respondent/Assistant Engineer.

3. A concern was raised by the 4 th

respondent/Panchayat to the effect that the natural disaster in the form of land slide/flood was caused by the activities of the petitioner himself, which is evident from the report of the 3 rd respondent. It was also pointed out that the petitioner was earlier directed to surrender some transit passes, which he had not obliged.

4. This Court notice that the 7th respondent is the

competent authority, who recommended removal of sand to the extent of 307.41 M3. The 6th respondent is the Assistant Engineer (LSGD) of the Grama Panchayat concerned, who recommended removal of the earth to the extent of only 97.674 M3. When the report of a more competent authority like the 7th respondent recommends removal of earth to the extent of 307.41 M3, the report of

the 6th respondent cannot be relied upon to refuse the permit/transit passes sought for by the petitioner.

5. In the circumstances, the 3rd

respondent/Geologist is directed to consider the petitioners request for issuance of necessary permit and transit pass for transportation of ordinary earth, after taking into account all relevant considerations - statutory or otherwise - in accordance with law, within a period of one month from the date of receipt of a copy of this judgment. The petitioner will produce a copy of this

judgment before the 3rd respondent/Geologist.

The Writ Petition is disposed of as above. Sd/- C. JAYACHANDRAN JUDGE SKP/31-05 APPENDIX OF WP(C) 5380/2024 PETITIONERS EXHIBITS: EXHIBIT P1 TRUE COPY OF THE ORDER OF THE DIVISIONAL FOREST OFFICER, THRISSUR DIVISION DATED 12.9.2018 EXHIBIT P2 TRUE COPY OF THE COMMUNICATION ISSUED BY THE TAHASILDAR(R.R), THRISSUR TO THE SECOND RESPONDENT DATED 1.1.2019 EXHIBIT P3 TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT DATED 6.3.2019 EXHIBIT P4 TRUE COPY OF THE COMMUNICATION DATED 21.3.2019 ISSUED BY THE THIRD RESPONDENT TO THE SECOND RESPONDENT EXHIBIT P5 TRUE COPY OF THE COMMUNICATION DATED 14.6.2019 ISSUED BY THE FOREST DIVISIONAL OFFICER, THRISSUR DIVISION EXHIBIT P6 TRUE COPY OF THE COMMUNICATION DATED 15.6.2019 ISSUED BY THE DEPUTY RANGE FOREST OFFICER, PONGANAMKADU EXHIBIT P7 COPY OF THE ORDER DATED 18.6.2019 ISSUED BY THE THIRD RESPONDENT EXHIBIT P8 TRUE COPY OF THE PATTA DATED 15.11.2021 ISSUED BY THE SPECIAL TAHASILDAR, LAND ASSIGNMENT NO.1, THRISSUR EXHIBIT P9 TRUE COPY OF THE TAX RECEIPT DATED 15.6.2022 ISSUED BY THE VILLAGE OFFICER, MADAKATHARA EXHIBIT P10 TRUE COPY OF THE JUDGMENT OF THIS HONORABLE COURT DATED 6.10.2022 IN W.P (C). NO.23601 OF EXHIBIT P11 TRUE COPY OF THE JUDGMENT DATED 27.10.2023 IN WPC NO.8267 OF 2023 EXHIBIT P12 TRUE COPY OF THE ORDER DATED 18.10.2023 ISSUED BY THE FIRST RESPONDENT EXHIBIT P13 TRUE COPY OF THE SITE

INSPECTION REPORT PREPARED BY THE THIRD RESPONDENT DATED 3.10.2023 EXHIBIT P14 TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER, MADAKKATHARA TO THE THAHASILDAR DATED 27.9.2023 EXHIBIT P15 TRUE COPY OF THE ORDER DATED 28.11.2023 ISSUED BY THE FIRST RESPONDENT EXHIBIT P16 TRUE COPY OF THE REPORT SUBMITTED BY THE SEVENTH RESPONDENT BEFORE THE FIRST RESPONDENT DATED 20.9.2023 EXHIBIT P17 TRUE COPY OF THE PLAN SUBMITTED BY THE

PETITIONER BEFORE THE SIXTH RESPONDENT IN ACCORDANCE WITH EXHIBIT P16 REPORT OF THE SEVENTH RESPONDENT EXHIBIT P18 TRUE COPY OF THE REPORT ALONG WITH A SKETCH OF RETAINING WALL AND PLAN DATED 23.12.2023 ISSUED BY THE SIXTH RESPONDENT RESPONDENTS' EXHIBITS:NIL TRUE COPY P.A. TO JUDGE

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